



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY



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Next Meeting:
March 9, 2010
10 am, GPO
Carl Hayden Room

February Meetings Canceled

Due to the recent snowstorm, the February 9 meeting of the Legislation Committee was canceled. In addition, a scheduled meeting with DOJ civil/criminal divisions to discuss our proposed language on testimonial subpoena authority was canceled.

Updates on Pending Legislation

S. 1745-Non-Federal Employee Whistleblower Protection Act of 2009

S. [1745](#) expands the whistleblower provisions under Section 1553 of the [American Recovery and Reinvestment Act of 2009](#) (P.L. 111-5) (ARRA) that cover whistleblowing reprisal allegations by state, local, and contractor employees whose employers receive covered stimulus funds. S. 1745 would amend the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 265) to expand protections to employees of private contractors or grantees who receive funds or property from the Federal Government.

S. 1745, introduced by Senator Claire McCaskill (D-MI) and co-sponsored by Jim Webb (D-VA), includes several provisions affecting Inspectors General (IG):

a. Complaint Investigations: The Bill would require IGs to investigate reprisal complaints and submit a “report of the findings of the investigation” to the complainant, his/her employer, and the head of the agency. However, the Bill does provide some discretion to an IG *not* to investigate such complaints. First, the IG can make a determination within 180 days of the filing of the complaint that “the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint.”

In addition, the IG may decide not to conduct or continue an investigation by providing the complainant and non-Federal employer with a written explanation of such decision (the reasons of such explanation are neither defined nor limited). An IG must include a list in its Semi-annual Reports to Congress (SARs) of those investigations it decided not to conduct or continue.

b. *Investigation Timeframes*: The Bill establishes an initial 180-day limit to complete the investigation. This 180-day limit can be extended “for such additional period of time” as to be agreed between the IG and the complainant, or by an additional 180-days unilaterally by the IG “provided the IG provides a written explanation” to the complainant and the non-Federal employer. The IG must also provide a list in its SARs of those investigations for which the IG “received” an extension.

c. *Access to Investigative File of Inspector General*: The Bill provides that a complainant shall have access to the investigation file “in accordance with section 552a of title 5” (“Privacy Act.”). Such disclosure may occur when the complainant files a civil action or when the investigation is deemed closed. The IG investigation is deemed closed when a complainant files an appeal to an agency head or a court of competent jurisdiction. Disclosure of information is subject to exclusion based on:

- Information protected from disclosure by a provision of law; and
- any additional information the IG determines “disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation”, unless the IG determines that disclosure of “law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.”

In addition, the Bill provides that an IG may not respond to “any inquiry or disclose any information from or about any person alleging such reprisal,” except in accordance with the Privacy Act or “as required by any other applicable Federal law.” Finally, S. 1745 provides a civil cause of action for non-Federal employees after the exhaustion of administrative remedies provided under the Bill.

The Legislation Committee is working on providing comments to Senator McCaskill’s staff on S. 1745 based on its previous comments on similar provisions in the ARRA and in a [letter](#) regarding [H.R. 1507](#).

House Passes GAO Improvement Act of 2009

On January 13, the House passed by a voice vote [H.R. 2646](#), a bipartisan bill aimed at strengthening GAO’s oversight authority. A companion bill, [S. 2991](#), was introduced on February 4 by Senator Claire McCaskill (D-MO) and referred to the Committee on Homeland Security and Government Affairs.

The GAO Improvement Act provides, among other things, authorization for the Comptroller General to obtain federal agency records required to discharge his or her duties, including through bringing civil actions and make and retain copies of agency records and interview federal agency officers and employees. It would also require the Comptroller General’s express consent for other Government Accountability Office (GAO) employees to administer oaths to witnesses in matters other than auditing and settling accounts.

Other Pending Legislation

There has been no further action on [H.R. 3848](#) (Inspector General Improvement Act of 2009), [S. 139](#) or [S. 1490](#) (The Data Breach and Personal Privacy and Security Acts of 2009), [S. 372](#) or [H.R. 1507](#) (The Whistleblower Protection Enhancement Act of 2009).

If you want more information about other IG-related legislation, please click [here](#).